

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16533
[Redacted])	
Petitioners.)	DECISION
)	
)	

[Redacted](petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated February 22, 2001, asserting additional liabilities for Idaho income tax and interest in the total amounts of \$29 and \$2,580 for 1998 and 1999, respectively.

The auditor adjusted only the capital gains deductions claimed on the petitioners' Idaho income tax returns.

[Redacted] had a capital gain from an S corporation in which he held an interest. The petitioners claimed the Idaho capital gains deduction with regard to the entire gain.

The auditor limited the Idaho capital gains deduction to the "interest in income" that [Redacted] had held for the requisite period. He stated that [Redacted] percentage of ownership in the S corporation for 1997 was .48733% while the distributions indicated that they were based upon a percentage ownership of .50710%. The auditor indicated that the petitioners were not entitled to the Idaho capital gains deduction for more of the distribution than would represent the ownership percentage of .48733%.

Idaho Code § 63-3022H(4) stated:

If an individual reports a capital gain from qualified property from an S corporation or a partnership, a deduction shall be allowed under this section only to the extent the individual held his interest in the income of the S corporation or the partnership for the time required by subsection (3) of this section for the property sold.

[Redacted]

The petitioners have not provided either a factual basis or a legal basis for departing from the determination of the auditor.

This issue as it applied to the ownership in an S corporation has previously been considered by the District Court of the Fourth Judicial District of the State of Idaho. In that case, Judge [Redacted] in granting summary judgment to the Tax Commission stated that, "Idaho Code § 63-3022H is clear and unambiguous. It permits a shareholder in a subchapter S corporation to take a capital gains deduction "only to the extent the individual held his interest in the income of the S corporation . . . for the time required by subsection (3) of this section for the property sold." Richards v. Idaho State Tax Commission, Idaho District Court for Ada County, Case No. CV-OC-00-02852D (2000).

The Commission finds that the auditor's determination must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated February 22, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER the petitioners to pay the following tax, penalty, and interest (calculated to December 31, 2002):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 23	\$ 7	\$ 30
1999	2,224	425	<u>2,649</u>
			\$2,679
		Less Payment	<u>(1,400)</u>
		Amount Due	<u>\$1,279</u>

Demand for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]